

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 50:046. Department's reports to USDA; records retention for three (3) years.

RELATES TO: KRS Chapter 217B, 260.850-260.869; 7 U.S.C. 1739p, 7 C.F.R. Part 990

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation defines certain departmental reporting and record-retention duties.

Section 1. Definitions.

- (1) "Department" or "KDA" is defined by KRS 260.850.
- (2) "GPS" means Global Positioning System.
- (3) "Hemp" or "industrial hemp" is defined by KRS 260.850.
- (4) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

Section 2. Record keeping requirements; three year retention period.

- (1) For at least three years, license holders shall retain and make available for inspection by the department (or USDA inspectors, auditors, or their representatives) during reasonable business hours:
 - (a) Records regarding acquisition of hemp plants;
 - (b) Records regarding production and handling of hemp plants;
 - (c) Records regarding storage of hemp plants; and
 - (d) Records regarding disposal of all cannabis plants that do not meet the definition of hemp.

Section 3. Monthly Producer Reports.

- (1) On or before the first day of each month, the department shall submit a Monthly Producer Report to USDA providing the contact information, and current status, of each license that has been issued by the department. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Producer Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA's information sharing system whenever possible, or on USDA Form AMS-23. The department's Monthly Producer Reports shall include the following information:

- (a) For each new grower who is an individual, the Monthly Producer Report shall include the full name of the individual, the license number, the business address, the legal description (GPS location) of the land where hemp is produced, the telephone number, and the email address (if available); and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

- (b) For each new grower that is an entity, the Monthly Producer Report shall include the full name of the entity, the license number, the principal business location address, the legal de-

scription (GPS location) of the land where hemp is produced, and the full name, title, and email address (if available) for each employee for whom the entity is required to submit a criminal history record report; and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

(c) For each grower that was included in a previous report, and whose reported information has changed, the Monthly Producer Report shall include the previously reported information and the new information; and the status of each grower's license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

Section 4. Monthly Disposal Reports.

(1) On or before the first day of each month, the department shall submit a Monthly Disposal Report to USDA providing notice to USDA of any occurrence of non-conforming plants or plant material. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Disposal Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-24. The department's Monthly Disposal Reports shall include:

- (a) Grower's name, address, and license number;
- (b) Location ID, GPS coordinates, and USDA FSA lot description (farm number, tract number, field number, and sub-field number) for the lot that was subject to disposal;
- (c) Date of the disposal,
- (d) Name of the KDA employee who supervised the disposal; and
- (e) Total acreage.

Section 5. Annual Reports.

(1) On or before December 15 of each year, the department shall submit an Annual Report to USDA. The department shall submit its Annual Report in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-25. The department's Annual Reports shall include the following information for each licensee and address:

- (a) Total acreage planted;
- (b) Total acreage disposed or remediated; and
- (c) Total harvested acreage.

Section 6. Laboratory Test Results Reports.

(1) The department shall ensure that the designated testing laboratory's Laboratory Test Results Reports are submitted to USDA in a digital format that is compatible with USDA's information sharing system whenever possible or on USDA Form AMS-22. The Laboratory Test Results Reports shall include the following information:

- (a) The grower's license number, name, and business address;
- (b) The Location ID and USDA FSA lot number (farm number, tract number, field number, and sub-field number) for the lot from which the sample was collected;
- (c) The laboratory's name and DEA registration number;
- (d) The date of the test and date of the report;
- (e) Whether the test was a retest; and
- (f) The test result for total delta-9-THC on a dry weight basis.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 13, 2021 at 1:21 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation established the guidelines for participation in the Hemp Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation hemp program that has been administered by the KDA since the 2014 growing season and creates rules for program use.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new filing.

(b) The necessity of the amendment to this administrative regulation: This is a new filing.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new filing.

(d) How the amendment will assist in the effective administration of the statutes: This is a new filing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 970 growers, 12 Universities and 170 processors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establishes requirements for hemp programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture, and any agency that might concern hemp shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.682

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Income for the entire hemp program for 2021 was approximately \$482,000

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2020 were \$947,712.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 2020=\$1,067,000, 2021=\$482,000

Expenditures (+/-): 2020= \$119,000, 2021 no estimate yet

Other Explanation: